



**FILED**

Jun 23 2008, 8:53 am

*Kevin Smith*

**CLERK**  
of the supreme court,  
court of appeals and  
tax court

ATTORNEYS FOR APPELLEE:

**MICHAEL GENE WORDEN**  
Deputy Attorney General  
Indianapolis, Indiana

**IN THE  
COURT OF APPEALS OF INDIANA**

)
)
)
)
)
)
)
)
)

No. 02A03-0801-CR-19

APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable Frances C. Gull, Judge  
Cause No. 02D04-0601-FC-17

**BAKER, Chief Judge**

Appellant-defendant Lance Morningstar appeals the sentence imposed by the trial court after he pleaded guilty to Possession of a Handgun with an Obliterated ID,<sup>1</sup> a class C felony, Carrying a Handgun Without a License,<sup>2</sup> a class C felony, Possession of Cocaine,<sup>3</sup> a class C felony, and Possession of Paraphernalia,<sup>4</sup> a class D felony. Specifically, Morningstar argues that his sentence is erroneous because of an impermissible double enhancement. Finding no error, we affirm the judgment of the trial court.

### FACTS

On January 27, 2006, Morningstar was charged with class C felony possession of a handgun with an obliterated ID, class C felony carrying a handgun without a license, class C felony possession of cocaine, and class D felony possession of paraphernalia. On March 13, 2006, Morningstar was alleged to be a habitual offender. On April 10, 2006, Morningstar pleaded guilty to all counts.

On May 1, 2006, the trial court sentenced Morningstar to eight years of incarceration for possession of a handgun with an obliterated ID and enhanced the sentence by eight years for the habitual offender finding, six years of incarceration for carrying a handgun without a license, six years of incarceration for possession of cocaine, and two years of incarceration for possession of paraphernalia. It ordered all sentences to run concurrently, for an aggregate term of sixteen years.

---

<sup>1</sup> Ind. Code § 35-47-2-18.

<sup>2</sup> I.C. § 35-47-2-23.

<sup>3</sup> Ind. Code § 35-48-4-6.

<sup>4</sup> I.C. § 35-48-4-8.3.

On November 19, 2007, Morningstar filed his motion to correct erroneous sentence, which the trial court subsequently denied. Morningstar now appeals.<sup>5</sup>

### DISCUSSION AND DECISION

Morningstar argues that the trial court improperly denied his motion to correct erroneous sentence. He contends that his sentence is erroneous on its face for three reasons: the State filed the habitual offender allegation in an untimely fashion, the habitual offender allegation did not accurately list his prior convictions in the proper sequence, and the double enhancement of the class C felony possession of a handgun with an obliterated ID conviction violates the Double Jeopardy Clause of the Indiana Constitution.

When reviewing the denial of a motion to correct erroneous sentence, we defer to the trial court's factual findings and review the decision for an abuse of discretion. Newsom v. State, 851 N.E.2d 1287, 1289 (Ind. Ct. App. 2006). However, we review the legal conclusions de novo. Id. A motion to correct a sentence should be granted only when there is a sentencing error on the face of the judgment that is against the relevant statutory authority. Id. at 1288.

We initially observe that Morningstar has waived his two arguments regarding the habitual offender enhancement because he did not raise these arguments in his motion before the trial court. Failure to raise these arguments in the motion before the trial court

---

<sup>5</sup> Neither the written sentencing order nor the abstract of judgment are included in the record on appeal.

waives the ability to raise them on appeal. Walker v. State, 843 N.E.2d 50, 55 (Ind. Ct. App. 2006), trans. denied. Thus, they are unavailable here.

Furthermore, Morningstar may have waived his right to appeal these procedural arguments by pleading guilty. While Morningstar may appeal his sentence, he has waived the right to appeal procedural errors per the terms of his plea agreement. It is well established that a defendant may waive the right to challenge his conviction on appeal. Mapp v. State, 770 N.E.2d 332, 334-35 (Ind. 2002). Thus, we decline to address the merits of Morningstar's arguments based on his habitual offender finding.

Morningstar's third argument focuses on the sentence imposed for the possession of a handgun with an obliterated ID conviction. He argues that the sentence is erroneous on its face because the charge was doubly enhanced. More specifically, Morningstar claims that the charge was enhanced from a class A misdemeanor to a class C felony because of his prior convictions. Thus, Morningstar argues that the habitual offender finding further enhanced the charge, in violation of the Double Jeopardy Clause.

However, Morningstar's argument is without merit. Indiana Code section 35-47-2-18-23(b) provides that possession of a handgun with an obliterated ID is always a class C felony, not a class A misdemeanor. Moreover, the charging information clearly indicates that the State initially charged him with the crime as a class C felony. Appellant's App. p. 3. Therefore, the charge of possession of a handgun with an obliterated ID was not enhanced based on Morningstar's prior convictions.

The habitual offender enhancement was applied solely to the possession of a handgun with an obliterated ID charge and not to the other charges. The eight-year

sentence for that conviction is within the statutory range<sup>6</sup> and the eight-year enhancement for the habitual offender finding is also permissible.<sup>7</sup> Thus, the sixteen-year sentence imposed by the trial court is not erroneous and the trial court did not abuse its discretion by denying Morningstar's motion to correct erroneous sentence.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.

---

<sup>6</sup> For a class C felony, the sentencing range is a term of incarceration between two and eight years, with the advisory term being four years. Ind. Code § 35-50-2-6(a).

<sup>7</sup> The court shall sentence a person found to be a habitual offender to an additional fixed term that is not less than the advisory sentence for the underlying offense nor more than three times the advisory sentence for the underlying offense. Ind. Code § 35-50-2-8 (h).